

Remarks

The Applicant respectfully requests reconsideration of this application, as amended, in light of the amendments above and the remarks below. Prior to this amendment, claims 1-14 were pending, and upon entry of this amendment claims 1-17, 9-13 and 15-22 will be pending.

The office action mailed July 25, 2003, the Examiner rejected claims 1-14 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. The above amendments include a number of changes to the claims which the Applicant submits obviates these § 112 rejections. With respect to the cited references, the Examiner sets forth the following rejections: claims 1-2, 4-11 and 13-14 are rejected under 35 U.S.C. § 102(b) as being anticipated by USPN 4,809,693 to Rangoni et al. (hereinafter "the Rangoni patent"); claim 3 is rejected under 35 U.S.C. § 103(a) as being unpatentable over the Rangoni patent; and claim 12 is rejected under 35 U.S.C. § 103(a) as being unpatentable over the Rangoni patent as applied to claim 8 and further in view of USPN 5,606,966 to Smith (hereinafter "the Smith patent").

With respect to the rejection of claims 1-2, 4-11 and 13-14 under 35 U.S.C. § 102(b) as being anticipated by the Rangoni patent, the Applicant respectfully submits that the Rangoni patent fails to particularly teach each element recited in independent claims 1 and 9.

Independent claim 1 recites, in part, a "valve movable to an open position during inhalation to permit fresh air to flow from the outer port into the central port to deliver the fresh air to a respiratory system of the user" and "the valve further movable to a closed position during exhalation to substantially prevent air flow from exiting the respiratory system out through the outer port 50." The Rangoni patent merely discloses that a valve 6 is kept open by a spring 16 during inhalation so that air can flow to the lungs. Thus, the Rangoni patent only teaches that the valve is kept open, and not movable, during inhalation. Consequently, claim 1 is not anticipated by the Rangoni patent.

Independent claim 9 recites, in part, "an outer port defined by a channel extending from an inlet end to an outlet end and covered by the cap such that the covered channel provides a passage way for fresh air received at the inlet to be communicated to the outlet for delivery to the central port." The Rangoni patent fails to disclose any housing having a channel which is covered by a cap to define a port for fluid communication. In contrast, the Rangoni patent merely provides a cylindrical casing 10 having open ends which are capped by a top plate 12 and a collar 3. Neither the top plate 12 or the collar 3 cooperate with a channel in the housing 10 to define a port for fluid communication. Consequently, the Rangoni patent fails to anticipate independent claim 9.

For the foregoing reasons, the Applicant respectfully submits that the Rangoni patent fails to anticipate independent claims 1 and 9. Consequently, independent claims 1 and 9 are patentable and not anticipated by the Rangoni patent, and dependent claims 2, 4-7, and 10-13, which depend therefrom and include all the limitations thereof, are similarly patentable and not anticipated by the Rangoni patent.

With respect to the obviousness rejections to claims 3 and 12, the Applicant respectfully submits that the Rangoni patent fails to provide any suggestion, motivation, or incentive to provide a valve which is movable during inhalation (claim 1) or to provide a housing having a channel which cooperates with the covering to define a port for fluid communication (claim 9). Moreover, the Applicant respectfully submits that the Smith patent fails to make up for these deficiencies of the Rangoni patent. Consequently, claims 3 and 12 are patentable for at least the same reasons that the independent claims from which they depend are patentable and nonobvious over the Rangoni and/or the Smith patents.

For the foregoing reasons, the Applicant respectfully submits that the claimed invention is not anticipate or obvious over the cited references. The Examiner is respectfully requested to reconsider the rejections and pass this case to issue. The Examiner is invited to contact the undersigned if it would further prosecution of this case to issue.

BEST AVAILABLE COPY

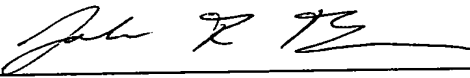
S/N: 10/080,748
Reply to Office Action of

Atty Dkt No. BIJ 0102 PUS

A check in the amount of \$475.00 is enclosed to cover the Petition fee of \$475.00. Please charge any additional fees or credit any overpayments as a result of the filing of this paper to our Deposit Account No. 02-3978 -- a duplicate of this paper is enclosed for that purpose.

Respectfully submitted,

Joshua Bischoff

By 
John R. Buser
Reg. No. 51,517
Attorney/Agent for Applicant

Date: 1-26-04

BROOKS KUSHMAN P.C.
1000 Town Center, 22nd Floor
Southfield, MI 48075-1238
Phone: 248-358-4400
Fax: 248-358-3351

BEST AVAILABLE COPY